

ADMINISTRATIVE -- INTERNAL USE ONLY

OGC Has Reviewed

19 AUG 1977

MEMORANDUM FOR THE RECORD (CIARDS Policy File)

FROM : F. W. M. Janney
Director of Personnel

SUBJECT: Acceptance of OGC Opinion 77-5166 dated
11 August 1977

1. Subject opinion is to the effect that the Agency may not ordinarily check the Federal tax returns of CIARDS disability retirees who report their incomes from salary or wages under the requirements of the "80% rule" established by law for CIARDS. The opinion does offer that the Agency could check a tax return if there is evidence of falsification in a retiree's report, but first must obtain a court order to do so.

2. I accept this opinion for application to CIARDS. A copy of the opinion is attached herewith as part of the record.

(Signed) F. W. M. Janney

F. W. M. Janney

Attachment

cc: OGC
D/Fin
C/RAD

Distribution:

Orig - D/Pers (CIARDS Policy File)
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STATINTL DD/Pers/SP [REDACTED] gec (19 Aug 77)

OGC 77-5166
11 August 1977

MEMORANDUM FOR: C/RAD/OP

FROM:

Office of General Counsel

STATINT

SUBJECT:

Inspection of CIARDS Disability Annuitants'
Personal Federal Tax Returns in Compliance
With the 80% Rule

1. You have requested this Office to provide an opinion as to whether the personal Federal tax returns of CIARDS disability annuitants may be inspected to ascertain that the annuitant is in compliance with the 80% rule. The 80% rule provides that a CIARDS disability annuitant shall no longer be eligible to receive an annuity if, in each of two consecutive years as an annuitant, he has income exclusive of his annuity in excess of 80% of his income from his last year of active duty. On an annual basis disability annuitants are required to complete reports of income, including a statement of the address of the annuitant's local IRS office.

2. The inspection of individual income tax returns for investigatory purposes has been tightly restricted by the new IRS Code section 6103. As you will recall, that section formerly provided that the tax return of an individual could be inspected by the head of an agency upon approval by the Secretary of the Treasury or the Director of Internal Revenue of a written request from that agency head. Congress has decided that such access is too general; hence, the new Code provision only allows the investigation of tax returns by an agency head or his delegate upon the grant of an ex parte order by a Federal district court judge. To obtain such an order, the agency head must submit to the court facts to determine that:

(i) there is reasonable cause to believe, based upon information believed to be reliable, that a specific criminal act has been committed;

(ii) there is reason to believe that such return or return information is probative evidence of a matter in issue related to the commission of such criminal act; and

(iii) the information sought to be disclosed cannot reasonably be obtained from any other source, unless it is determined that, notwithstanding the reasonable availability of the information from another source, the return or return information sought constitutes the most probative evidence of a matter in issue relating to the commission of such criminal act.

The criminal offense in such cases is, of course, the falsification by the annuitant of his annual income report. It appears, however, that in order to obtain the necessary court order to examine the tax return, the Agency must have independent evidence of the falsification.

3. In its effort to curtail abuse of tax return information, the Congress has also foreclosed the use of such information in legitimate administrative investigations. Accordingly, it is the opinion of this Office that the personal Federal tax returns of CIARDS disability annuitants may not be examined without first obtaining the necessary court order under the provisions of IRS Code section 6103. This question was recently presented to an Assistant Commissioner of the Internal Revenue Service by [REDACTED] of this Office, and the Commissioner's response was consonant with the opinion of the undersigned.

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